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The Guide to Sanctions - Fifth Edition

Sanctions extraterritoriality and overlapping jurisdictions: new horizons in US, EU and UK law

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As the geopolitical landscape continues to be unsettled, sanctions are becoming the go-to response from many states and are being applied in ever more innovative ways. This naturally creates a host of issues from the perspective of international businesses – and the practitioners who advise them.

Edited by Rachel Barnes of Three Raymond Buildings, Anna Bradshaw of Peters and Peters, Paul Feldberg of Brown Rudnick, David Mortlock of Willkie Farr & Gallagher, Anahita Thoms of Baker & McKenzie and Wendy Wysong of Steptoe, the fifth edition of The Guide to Sanctions is an invaluable resource as it dissects the topic in a practical fashion from every stakeholder's perspective.

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Sanctions extraterritoriality and overlapping jurisdictions: new horizons in US, EU and UK law

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INTRODUCTION

A principal purpose of international sanctions is for one or more states to exert economic pressure on one or more other states in support of the national security and foreign policy aims of the sanctioning state (or states). Not surprisingly, then, international sanctions can bring into sharp focus questions about extraterritoriality.

This chapter starts by considering the long-standing manifestation of extraterritoriality in the US sanctions context. Under nearly all US sanctions regimes, non-US persons engaging in conduct outside US territory and without any other US nexus, and outside the territory of the state that is the target of US sanctions, may face the imposition of sanctions measures by the United States for engaging in certain sanctionable conduct that undermines US national security or foreign policy objectives.

The chapter then considers the challenge by the European Union to the extraterritorial effects of certain US sanctions in the form of the European Union Blocking Regulation, adopted in 1996 following the passage of the US Helms-Burton Act targeting Cuba, and revived in 2018 following the reimposition by the Trump administration of certain sanctions on Iran that had extraterritorial effects.

Finally, this chapter considers extraterritoriality in the context of present-day sanctions, focusing on the multilateral sanctions targeting Russia in response to Russia's invasion of Ukraine in February 2022. As will be demonstrated, sanctioning states have sought to push the boundaries of extraterritorially to tackle geopolitical risks and combat sanctions evasion and circumvention, through the imposition of novel sanctions measures that affect activities taking place in the territories of third states (i.e., those that are neither the territories of the sanctioning states nor the territories of the states targeted by sanctions).

US SANCTIONS MEASURES HAVING EXTRATERRITORIAL EFFECT

The US Department of the Treasury's Office of Foreign Assets Control (OFAC) is the principal agency in the United States charged with the administration and enforcement of US sanctions. OFAC works closely with other US government agencies, including in particular the US Department of State, which has a central role in setting US sanctions policy.

US sanctions restrictions generally apply to US persons or persons subject to US jurisdiction, which typically include US citizens, US permanent residents, entities organised under US law (including US financial institutions and their non-US branches), and persons (individuals and entities) in the United States (including US branches of non-US companies), and, in certain circumstances under the Cuba and Iran sanctions regimes, non-US entities owned or controlled by the foregoing. Non-US persons can violate US sanctions restrictions and face civil and criminal liability when their transactions (1) are prohibited as to US persons and (2) have a direct or indirect connection to a US person or the United States (US nexus). A US nexus includes, for example, transactions involving, directly or indirectly, a US individual (such as a US officer, director or employee of a non-US entity), a US company or a US affiliate of a non-US company (including a US parent, sister company, subsidiary or branch), most transactions in US dollars, or other transactions that transit a bank in the United States (including US branches of non-US banks) or a US bank branch located outside the United States.

Where US jurisdiction exists, the US government may impose civil and criminal penalties against both US and non-US persons for violations of US sanctions laws. For example, the United States imposed civil penalties (in 2005) and criminal penalties (in 2010) against ABN AMRO Bank NV, a Dutch corporation headquartered in Amsterdam, for, among other things, conspiring to facilitate prohibited US dollar transactions on behalf of financial institutions and customers located in sanctioned countries in violation of the US International Emergency Economic Powers Act (IEEPA) and the Trading With the Enemy Act, resulting in an aggregate penalty amount of approximately US$580 million.[2]

The United States imposes sanctions measures (sometimes referred to as secondary sanctions) against non-US persons, regardless of whether it can exercise jurisdiction over the sanctions target, for example, by restricting their access to, or excluding them entirely, from the US financial system and marketplace, and blocking their property and interests in property that are located in the United States or in the possession or control of US persons. The US government imposes such measures on persons (mostly non-US persons) that engage in certain sanctionable activities: for example, providing material support for, or acting for or on behalf of, a US-sanctioned person; operating in a particular economic sector of a country targeted by US sectoral sanctions; engaging in certain significant transactions for or on behalf of certain US-sanctioned persons; or, more recently, engaging in certain transactions involving Russia's military-industrial base, among other conduct.

The imposition by the United States of sanctions measures having extraterritorial effect is not new. In the early 1980s, for instance, the Reagan administration imposed short-lived sanctions measures prohibiting not only US companies from exporting US oil and gas technologies to the Soviet Union, but also the foreign subsidiaries and licensees of those US companies in Europe from doing so.[3] From the 1990s until the early 2000s, the United States continued its implementation of unilateral sanctions measures having extraterritorial effect. The passage of the Helms–Burton Act in 1996 created – under Title III – a private cause of action in US courts for US citizens against non-US persons who trafficked in any property that Cuba had previously expropriated from US citizens.[4]

Also in 1996, the United States enacted the Iran and Libya Sanctions Act (ILSA) to deter investment by both US and non-US companies in the oil production sectors of Iran and Libya.[5] ILSA authorised the imposition of sanctions on persons that made investments exceeding certain monetary thresholds in Iran's and Libya's energy sectors. In 2004, the IEEPA-based sanctions on Libya were terminated and, in 2006, the Act was renamed the Iran Sanctions Act (ISA).[6] Additionally, in 2010, Congress passed the Comprehensive Iran Sanctions Accountability and Divestment Act (CISADA), which authorised the imposition of 'correspondent account or payable-through account' (CAPTA) sanctions against foreign financial institutions for certain enumerated conduct relating to Iran.[7] Further, in 2012, the Obama administration issued the Foreign Sanctions Evaders Executive Order[8] (FSE Executive Order) targeting foreign persons who are deemed to have (1) 'violated, attempted to violate, conspired to violate, or caused a violation of' any license, order, regulation, or prohibition contained in, or issued pursuant to a lengthy list of executive orders and other sanctions measures; or (2) have 'facilitated deceptive transactions for or on behalf of any person subject to U.S. sanctions concerning Syria or Iran'.

Notably, sanctions measures actually imposed pursuant to the Helms-Burton Act, ILSA, ISA, CISADA and the FSE Executive Order have been relatively rare. For example, despite the attention that accompanied the enactment of CISADA and its expanded authorities to target

foreign financial institutions for certain activities related to Iran, OFAC imposed the CAPTA sanctions measures on only two foreign financial institutions, one of which has since had those sanctions lifted. Moreover, presidents have frequently invoked their waiver authority under these statutes, including waiver of Title III of the Helms-Burton Act from its enactment in 1996 to 2019.

Under various sanctions authorities, including legislation and executive orders, the United States has the authority to impose sanctions on persons for providing material support to certain US-sanctioned persons. For example, under Section 228 of the Countering America's Adversaries Through Sanctions Act (CAATSA), enacted in 2017, the United States may add a person to the Specially Designated Nationals and Blocked Persons List (SDN List) if the United States determines that the person knowingly 'facilitate[d] a significant transaction or transactions, including deceptive or structured transactions, for or on behalf of . . . any person subject to sanctions imposed by the United States with respect to the Russian Federation'.[9] Separate from CAATSA, under nearly every sanctions executive order, OFAC has the authority to designate persons determined to have materially supported a person whose property and interests in property are blocked under the relevant executive order.[10] Other sanctions authorities provide for the imposition of sanctions against persons determined to have engaged in various other types of 'sanctionable activity'.[11]

In sum, the United States has expansive authority, through both legislation and executive orders, to impose sanctions measures on persons that are neither subject to US jurisdiction nor the principal targets of US sanctions.

EU AND UK BLOCKING REGULATIONS

Both EU sanctions and the UK autonomous regime that came into force on 31 December 2020 are extraterritorial to a certain extent in that they must be complied with by their respective nationals and companies wherever in the world they are located.[12] Unlike US sanctions, however, there is no concept of 'secondary sanctions' in the European Union or the United Kingdom, and EU and UK sanctions do not expressly target activities that do not involve either EU or UK persons, or activities within the territory (or airspace or territorial waters) of the European Union or the United Kingdom.

These various sanctions regimes have generally managed to co-exist, largely due to the fact that the United States, the European Union (and the United Kingdom since 2020) have been broadly aligned (or at least compatible with one other) on the national security and foreign policy objectives underlying the competing sanctions regimes. However, when the foreign policies of the European Union (and the United Kingdom since 2020) have been incompatible, the extraterritorial reach of US sanctions has come under challenge.

The EU Blocking Regulation[13] was adopted in 1996 to protect EU companies against, and counteract the effects of, the extraterritorial application of US sanctions imposed against Cuba under the Helms-Burton Act, and was amended in August 2018 to cover the re-imposed US sanctions on Iran. The regulation applies to EU residents and companies incorporated in the European Union. The latter includes EU subsidiaries of US companies, but not EU branches of US companies (as branches are not distinct legal entities) nor US subsidiaries of EU companies. The regulation prohibits covered EU persons from complying, whether directly or indirectly, by their acts or by deliberate omission, with the (US) sanctions listed in its annex, including any requirement or prohibition based on such sanctions, or resulting from them, or other actions based thereon or resulting therefrom.[14] In exceptional cases, EU

persons may be authorised to comply with the relevant US sanctions where non-compliance would cause serious damage to their interests or the European Union.

In theory, a breach of the EU Blocking Regulation could be enforced by the competent national authority. However, there is no known case in which the EU Blocking Regulation has been enforced since it was adopted. It is first and foremost a diplomatic measure, intended to signal the European Union's dissatisfaction with the expectation by the United States that EU companies will ensure their conduct outside the United States adheres to certain US sanctions that may be inconsistent with the European Union's own national security and foreign policy objectives.

The EU Blocking Regulation can, however, have a significant impact in disputes between private parties. For instance, if an EU party were to terminate or repudiate a contract in order to comply with the relevant US sanctions, then the aggrieved counterparty could in principle (as a matter of EU law) rely on the EU Blocking Regulation to challenge such actions.

This is illustrated in the Bank Melli case,[15] where Deutsche Telekom terminated a contract with the German branch of Bank Melli, an entity targeted by US blocking sanctions under the Iran Freedom and Counter-Proliferation Act of 2012. Bank Melli challenged this termination before the German courts, arguing that the EU Blocking Regulation prevented the termination. The case was referred to the Court of Justice of the European Union (CJEU), which held that where all evidence suggests a contract was terminated in order to comply with US sanctions (thereby contravening the EU Blocking Regulation), the burden of proof in civil proceedings lays on the EU operator terminating the contract to show that its action was not taken to comply with US sanctions. The CJEU also confirmed that a court may find that the termination of a contract in this situation is invalid, subject to an assessment of whether forcing the performance of the contract could entail disproportionate economic consequences in the circumstances of the case. The German higher regional court ultimately ruled in favour of Bank Melli, holding that the termination of the contract was invalid and ordered Deutsche Telekom to fulfil its contract with Bank Melli.

Post-Brexit, the United Kingdom has retained under UK law the EU Blocking Regulation as it stood in December 2020 (the UK Blocking Regulation).[16] The UK enforcement powers and penalties are set out in the Extraterritorial US Legislation (Sanctions against Cuba, Iran and Libya) (Protection of Trading Interests) Order 1996. Breaching the UK Blocking Regulation is a criminal offence and the maximum penalty is an unlimited fine. Although, as with the European Union, we are not aware of any enforcement action having been taken, to date.

Navigating the complexities of US sanctions having extraterritorial reach and the EU and UK blocking regulations presents conflicts-of-laws and compliance challenges to market actors. Companies must assess the potential application of US sanctions measures to their operations against the potential application of the EU and UK blocking regulations.

TARGETING SANCTIONS EVASION ON THE PERIPHERY OF EXTRATERRITORIALITY

In response to Russia's invasion of Ukraine in February 2022, the United States, the European Union and the United Kingdom, among other countries, have extended the use of sanctions measures having extraterritorial effects. Such measures include asset freeze designations of intermediaries, targeted global service restrictions and rules targeting circumvention through third-country trade.

US SANCTIONS TARGETING THIRD-COUNTRY FINANCIAL INSTITUTIONS

In December 2023, the Biden administration issued Executive Order 14114 intended to counter the evasion of existing sanctions targeting Russia and 'degrade Putin's war machine'.[17] Executive Order 14114, which amended Executive Order 14024, authorises OFAC to impose sanctions on foreign (i.e., non-US) financial institutions that have engaged in certain transactions that could support Russia's military-industrial base.

Specifically, regardless of any US nexus, non-US financial institutions risk the imposition of blocking sanctions or restrictions on US correspondent or payable-through accounts, if they (1) conduct or facilitate any significant transaction or transactions for or on behalf of any person designated pursuant to Executive Order 14024 for operating or having operated in the technology, defence and related materiel, construction, aerospace or manufacturing sectors of the Russian economy or other sectors as may be determined to support Russia's military-industrial base by the US Secretary of the Treasury, in consultation with the Secretary of State,[18] or (2) conduct or facilitate any significant transaction or transactions, or provide any service, involving Russia's military-industrial base, including the sale, supply or transfer, directly or indirectly, to Russia, of any item or class of items as may be determined by the US Secretary of the Treasury, in consultation with the Secretary of State and the Secretary of Commerce.[19]

Additionally, OFAC has stated that 'helping companies or individuals evade US sanctions on Russia's military-industrial base', including actions such as 'offering to set up alternative or non-transparent payment mechanisms' or 'obfuscating the true purpose of or parties involved in payments' could provide a basis for the imposition of sanctions.[20]

EUROPEAN UNION AND UNITED KINGDOM EXPANDING SANCTIONS TARGETED AT THIRD COUNTRY INTERMEDIARIES

In the European Union and the United Kingdom, there has been an increasing focus on measures targeting persons that operate in third countries and enable or facilitate the circumvention of sanctions prohibitions.

The European Union introduced broad new asset freeze designation grounds with respect to Russia in June 2023, which allows for designations of persons which, aside from facilitating the circumvention of the European Union's Russia sanctions, are 'otherwise significantly frustrating those provisions'. As per the European Union's reasoning, the purpose of these designation grounds is to target 'third country operators not bound by' EU sanctions and that contribute to Russia's capacity to wage war in a way that may undermine the purpose and effectiveness of the European Union's Russia sanctions regime.[21] Once designated on the EU asset freeze list, the listed persons' funds and economic resources in the European Union must be frozen and no new funds or economic resources may be made available to such persons.

UK sanctions regulations generally contain broad designation criteria that permit the designation of persons who the Secretary of State has reasonable grounds to suspect is an involved person. This usually includes (among other things) persons who assist with the contravention or circumvention of sanctions under the relevant regulations or, even more broadly, who are associated with such involved persons. Unlike breaches of the facilitation or circumvention prohibitions under relevant sanctions regulations, a person may be designated even where there is no UK nexus to their activities. Furthermore, while historically the vast majority of designations have been in respect of persons that have some direct connection to the jurisdiction targeted by the relevant sanctions regime (e.g., they

are citizens of that jurisdiction or are incorporated under its laws or resident there), such a connection is not required for a designation to be made. Designations can therefore be made where there is neither a territorial or nationality-based connection to the United Kingdom or to the jurisdiction targeted by the relevant sanctions regime.

The United Kingdom notably made use of this extraterritorial designation power in April 2023, when it, along with the United States, designated two Cypriot financial fixers, Demetris Ioannides and Christodoulos Vassiliades. These individuals were described as professional enablers who allegedly supported two designated Russian oligarchs: Roman Abramovich and Alisher Usmanov. The UK government's post-legislative scrutiny of the Sanctions and Anti-Money Laundering Act 2018, published in March 2024, noted that, as part of its efforts to clamp down on sanctions evasion and circumvention, the UK government had designated over 30 individuals and entities from third countries under the United Kingdom's Russia sanctions regime.[22]

UK LEGAL SERVICES BAN

A novel UK sanctions measure that indirectly extends the extraterritorial reach of UK sanctions is the UK legal services ban, which came into force in June 2023.

Brokering and facilitation prohibitions under UK sanctions have long restricted the provision of legal services in relation to certain sanctioned activities, but have always required that there be a UK nexus to the underlying activity being brokered, facilitated or both. In contrast, the UK legal services ban prohibits the provision of certain non-contentious legal advisory services to non-UK persons in relation to an activity that would be prohibited under the United Kingdom's Russia sanctions regime as if there were a UK nexus, regardless of whether such a nexus exists in practice. There is a limited exception and a general licence that allow for, among other things, the provision of sanctions compliance advice.

Although the prohibition still applies to legal service providers with a UK nexus, it has an extraterritorial dimension in that it breaks the requirement for a jurisdictional link to the activity that is the subject of the legal advice. Moreover, the ban applies in relation to legal advisory services provided to non-UK persons, not just to persons connected with Russia.

As a result, any in-house counsel or external legal advisers with a UK nexus cannot provide non-contentious advice to non-UK clients without first having excluded the risk of a substantive UK sanctions violation (even if there is otherwise no UK nexus to the proposed transaction). This can be challenging if the absence of a UK nexus means that the parties to the transaction have not undertaken risk assessments or maintained records with an eye to UK sanctions compliance.

Where potential UK sanctions issues arise at the substantive level, in-house counsel and external legal advisers that are required to comply with the UK legal services ban may be required to seek a specific licence from the Export Control Joint Unit (ECJU) to continue advising on the transaction. There is a licensing ground that permits the ECJU to grant a specific licence for the provision of legal advisory services where a licensing ground would apply to the underlying prohibited activity (if that activity had a UK nexus). It is advisable to seek such licences early. Apart from the usual time pressures relating to sanctions licence applications, the ECJU may also need to consult with the Office of Financial Sanctions Implementation to determine whether a licence would be available in respect of activity that could violate financial sanctions.

Given widely acknowledged concerns regarding the scope of the UK legal services ban, the UK government has indicated that it intends to amend it in the near future.

RULES TARGETING CIRCUMVENTION THROUGH THIRD-COUNTRY TRADE

A majority of newly adopted sanctions provisions with extraterritorial effect target third-country trade and seek to expand import and export bans to avoid circumvention. Prohibitions on the trade of goods based on their origin, regardless of their country of export or destination, have forced businesses to carefully assess supply chains and transactions to ensure compliance, particularly in the context of sanctions against Russia. Such measures may have an indirect extraterritorial effect because they may restrict trade between third countries that are not themselves targeted by the respective sanctions regimes or required to comply with the laws of the sanctioning jurisdiction.

EUROPEAN UNION AND UNITED KINGDOM SEEK TO EXPAND THE SCOPE OF IMPORT BANS TO TACKLE CIRCUMVENTION

Traditionally, EU and UK trade sanctions focused on the location or place of consignment of the goods, or the identity of the trade counterparty, with only a very limited class of goods (such as arms and related materiel) sanctioned based on origin. The increased focus of EU and UK trade sanctions on the origin of goods has, however, given rise to additional compliance issues.

EU and UK sanctions against Russia now include prohibitions relating to the import and acquisition of certain categories of goods based on origin (as well as on the provision of technical assistance, financial services and funds, and brokering services relating to the same), including iron and steel products, metals, goods considered 'revenue generating' for the Russian state, liquid natural gas, oil, coal, gold and diamonds.

EU import restrictions on Russian-origin goods generally also prohibit the direct or indirect purchase or transfer of restricted goods that are destined for a third country and do not transit EU territory.

In contrast, the extraterritorial application of some of these UK sanctions is constrained in that they apply only to goods imported to the United Kingdom or acquired with the intent that they enter the United Kingdom. There are also exceptions that restrict the extraterritorial effect of some of these UK sanctions. For example, prohibitions on the acquisition of certain revenue-generating goods and the provision of technical assistance, financial services and funds, and brokering services relating to the same do not apply to UK nationals in Russia where those goods are located in Russia and are for personal use.

UK prohibitions on the acquisition of certain iron and steel products, revenue-generating goods, metals and diamond products originating in Russia are not subject to the same degree of constraints on extraterritoriality, however, and therefore pose compliance challenges. This is because they apply regardless of (1) the location of the goods at the time of purchase, (2) the amount of time that the goods have been located outside Russia (and whether their export from Russia predated the prohibitions), and (3) whether there is any intent for the goods to enter the United Kingdom.

There are also EU and UK sanctions on the import of certain iron, steel, gold and diamond products that are processed in third countries but incorporate elements that are of Russian origin. These restrictions seek to tackle what is viewed as the growing use of third countries

to circumvent trade sanctions, in this case by using or taking advantage of third country processing to conceal the Russian origin of goods.

MULTILATERAL OIL PRICE CAP

The price cap on Russian oil introduced in late 2022 is a prime example of trade restrictions having extraterritorial effect. The price cap on Russian oil, which was agreed by the G7 and its allies, is a multilateral effort to limit Russia's oil revenues while maintaining stable global energy markets. The price cap restricts the maritime transport of Russian-origin oil and petroleum products sold above the specified price caps by prohibiting the provision of certain associated services (i.e., trading and commodities brokering, financing, shipping, insurance, flagging and customs brokering) by service providers from the G7 and its allies. Russia responded by seeking to evade the price cap through use of a 'shadow fleet' and deceptive practices to continue to take advantage of service providers from the sanctioning states. In December 2023, the United States, in turn, imposed blocking sanctions on numerous third-country vessel owners, shipping companies, oil traders and intermediaries supporting Russia's evasion of the price cap.

In contrast to the ILSA and ISA, which authorised the imposition of unilateral US sanctions measures on third-country companies investing in Iran and Libya's oil sectors regardless of any US nexus, the price cap on Russian oil and petroleum products focuses on restricting Russia's access to service providers from the sanctioning states. While the multilateral price cap on Russian oil may therefore be less extraterritorial by design than the prior unilateral ILSA and ISA US sanctions measures, implementation and enforcement of the price cap have unquestionably had extraterritorial effects.

PREVENTING EVASION OF EXPORT BANS THROUGH THIRD COUNTRIES

Despite the European Union's extensive export bans, restricted goods still appear to reach Russia via third countries. The European Union has therefore further sought to expand the scope of its export bans to tackle circumvention via third countries. One novelty was to introduce the possibility to ban exports of certain sensitive or strategic goods and technology to third countries that have been identified as having systematically and persistently failed to prevent the sale, supply, transfer or export to Russia of such items, and despite diplomatic efforts by the European Union.[23] To date, the European Union has not made use of this provision.

EUROPEAN UNION'S MANDATORY 'NO RUSSIA' CLAUSE

Another measure that the European Union has adopted to prevent indirect exports of restricted EU-origin goods via third countries is the 'No Russia' clause. In December 2023, EU sanctions required EU exports to impose contractual conditions on their buyers in third country (save identified partner countries) that prevent the re-export to Russia and or for use in Russia of specified high-risk goods, including certain aviation and space industry items, jet fuel and fuel additives, firearms, other arms and ammunition, and certain common high-priority items, such as electronic integrated circuits, static converters, semiconductors and ball bearings.[24] Compliance with the clause must be ensured, with penalties or termination rights for breaches, and any violations must be reported to the relevant authority.

These mandatory contractual provisions de facto extend the EU export bans to third-party operators that would otherwise be wholly outside of EU jurisdiction. This is done through imposing an obligation on EU exporters to impose these obligations – as well as 'adequate

remedies' through their agreement, with the EU operators responsible for informing the competent authority in case of a breach by the third-country counterpart.

US IMPORT AND EXPORT MEASURES TARGETING RUSSIA

Recently, the United States expanded its import and export bans on Russia, which have indirect extraterritorial effects, as they restrict trade between the United States and third countries that are not themselves targeted by US sanctions regimes or are required to comply with US laws and regulations.

For example, in March 2022, the Biden administration issued Executive Order 14068 prohibiting (1) the import of Russian-origin fish and seafood, and preparations thereof, alcoholic beverages and non-industrial diamonds into the United States, (2) the export, re-export, sale or supply, directly or indirectly, of luxury goods as determined by the US Department of Commerce from or by a US person to any person located in Russia, and (3) the export, re-export, sale or supply, directly or indirectly, of US dollar-denominated banknotes from the United States or by a US person, to the government of Russia or any person located in Russia.[25] Executive Order 14068 also reserves power to the US Departments of Commerce and Treasury to prohibit further goods as needed. In December 2023, the Biden administration amended Executive Order 14068, expanding the import bans beyond the banned goods themselves to include products containing some of the banned goods.

Moreover, as of April 2024, the United States and the United Kingdom have newly prohibited the trade of Russian-origin metals – including aluminium, copper and nickel – on global metal exchanges and in derivatives trading.[26]

CONCLUSIONS

The recent sanctions imposed by the United States, the European Union and the United Kingdom against Russia mark a more assertive approach to extending the territorial reach of their sanctions, but an approach that is also more creative and calibrated.

In contrast to the unilateral extraterritorial measures historically employed by the United States, particularly exemplified by initiatives such as ILSA and ISA, the current measures targeting Russia demonstrate a more nuanced approach. For instance, while the multilateral oil price cap on Russian oil displays some extraterritorial elements, it diverges from past unilateral measures by focusing on restricting Russia's access to service providers from the sanctioning states, rather than directly targeting third-country individuals or companies that deal in Russian-origin oil and petroleum products. Additionally, the expanding territorial scope of the European Union's and the United Kingdom's sanctions against Russia seems to be specifically focused at curbing sanctions evasion through intermediaries or third countries, rather than simply extending sanctions jurisdiction beyond national borders.

ENDNOTES

[1] Nicole E Erb, Cristina Brayton-Lewis, Genevra Forwood, Sara Nordin are partners and Peter Chessick and Chris Thomas are counsel at White & Case LLP. The authors would like thank Tobias Zuber (associate, Brussels), Ed Pearson (associate, London), Joe Paisley (associate, London) and Arianna Talaie (law clerk, Washington, DC) for their contributions.

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[8] https://www.treasury.gov/ofac/downloads/fse/fselist.pdf.

[9] Countering America's Adversaries Through Sanctions Act, Section 228, available at https://congress.gov/115/plaws/publ44/PLAW-115publ44.pdf.

[10] See, e.g., Executive Order 14024 of 15 April 2021, available at https://ofac.treasury.gov/media/57936/download?inline; Executive Order 13846 of 6 August 2018, available at https://home.treasury.gov/news/press-releases/jy2249; Executive Order 13224 of 23 September 2001, available at https://www.state.gov/executive-order-13224/.

[11] See US Department of the Treasury, Office of Foreign Assets Control (OFAC), Frequently Asked Questions (FAQs), FAQ 1091, available at https://ofac.treasury.gov/faqs/1091.

[12] See, e.g., Article 13 of Council Regulation (EU) No. 833/2014, available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02014R0833-20240224.

[13] Council Regulation (EC) No. 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom.

[14] id., Article 5.

[15] Judgment of 21 December 2021, Bank Melli Iran, C-124/20, EU:C:2021:1035.

[16] Guidance on the United Kingdom's implementation of the UK Blocking Regulation, including standard forms for notifications and applying for authorisations, may be found at https://www.gov.uk/guidance/protection-of-trading-interests.

[17] White House Fact Sheet dated 22 December 2023, available at https://www.whitehouse.gov/briefing-room/statements-releases/2023/12/22/fac

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[18] See Determination Pursuant to Section 11(a)(ii) of Executive Order 14024, available at https://ofac.treasury.gov/media/932446/download?inline.

[19] See OFAC, regarding Russia Critical Items Determination for the list of items determined under the order, available at https://ofac.treasury.gov/media/932446/download?inline.

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[24] See id., Article 12g.

[25] Executive Order 14068 of 11 March 2022, available at https://www.govinfo.gov/content/pkg/FR-2022-03-15/pdf/2022-05554.pdf.

[26] US Department of the Treasury, Press Release, 12 April 2024, available at https://home.treasury.gov/news/press-releases/jy2249.

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